A

CHEE KUAT LIN

v.

MAJLIS PEGUAM

B

HIGH COURT MALAYA, KUALA LUMPUR
ALIZATUL KHAIR OSMAN J
[ORIGINATING MOTION NO: R4-17-15-2009]
10 MAY 2012

C ***LEGAL PROFESSION:*** *Petition - Petition for admission to the Malaysian Bar - Suppression of material facts - Appellant a police officer under suspension pending investigation - Whether appellant applied for practicing certificate when he was still member of the police force - Whether appellant gainfully employed as police officer when practicing as* D *advocate and solicitor - Whether respondent's complaint to Disciplinary Board ('DB') relates to appellant's conduct prior to his admission to Bar - Whether respondent should have applied to court to remove appellant from Roll - Whether decision of DB upheld - Legal Profession Act 1976, ss. 17(3), 30(1)(c) & 94*

E ***LEGAL PROFESSION:*** *Admission - Practicing certificate - Suppression of material facts - Application for practicing certificate when appellant still member of police force - Whether resulted in breach of s. 30(1)(c) Legal Profession Act 1976 - Legal Profession (Practice & Etiquette) Rules 1978, r. 44(b)*

F

LEGAL PROFESSION: *Professional discipline - Suspension from practice - Misconduct - Suppression of material facts - Appellant police officer under suspension pending investigation - Whether appellant applied for practicing certificate when he was still member of the police force -* G *Whether appellant gainfully employed as police officer when practicing as advocate and solicitor - Whether respondent's complaint to Disciplinary Board ('DB') relates to appellant's conduct prior to his admission to Bar - Whether respondent should have applied to court to remove appellant's name from Roll - Whether decision of DB upheld - Legal Profession Act* H *1976, ss. 17(3), 30(1)(c) & 94*

The appellant was at all material times an officer of the Royal Malaysian Police. Pursuant to s. 78(1) of the Police Act 1967, the appellant was interdicted from duty in July 2004 pending I investigations by the Anti-Corruption Agency ('ACA') on suspicion of accepting a bribe. In April 2005, after having filed his petition for admission to the Bar and upon completion of his pupillage, the appellant was admitted as an advocate and solicitor and was then

practicing as a legal assistant. Thereafter, the appellant's application to set up a sole proprietorship firm was allowed by the respondent. However, in March 2006, the Johore Bar Committee forwarded a letter from the Royal Malaysian Police to the respondent enquiring about the appellant in relation to his admission to the Bar since he was interdicted from duty as a police officer since July 2004 pending investigation. Pursuant to s. 99(3) of the Legal Profession Act 1976 ('the Act'), the respondent complained to the Disciplinary Board ('DB') that prior to the appellant's admission to the Bar, the appellant had deliberately withheld the following information from the respondent, *ie*, (i) that the appellant was still an active member of the police force; and (ii) that the appellant was under suspension pending investigation by the ACA. Further, the respondent also complained that the appellant had knowingly breached s. 30(1)(c) of the Act and r. 44(b) of the Legal Profession (Practice & Etiquette) Rules 1978 ('the 1978 Rules') by practicing as an advocate and solicitor when at all material times, he was gainfully employed as a police officer. Having decided that there was merit in the respondent's complaint, the DB (upon considering the Disciplinary Committee's report), ordered that the appellant be struck off the Roll ('the order'). Dissatisfied with the said decision, the appellant appealed to this court seeking to set aside the order whilst denying any misconduct on his part.

Held (setting aside order and substituting with appellant's suspension from practice for a period of one year):

(1) Section 94 of the Act deals with the power of the DB to exercise disciplinary control over an advocate and solicitor in relation to his conduct or omission in his capacity as a professional or otherwise. Based on the definition of "advocate and solicitor" as stated in s. 2 of the Act, the misconduct under s. 94(3) of the Act in respect of which a person can be punished under s. 94(2) refers to the conduct or omission by an advocate and solicitor of the High Court who has been admitted and enrolled under the Act or any previous written law. (paras 40-42)

(2) It was clear that the respondent's complaint to the DB and the DB's finding relates to the appellant's conduct prior to his admission to the Bar. It did not relate to the appellant's conduct as an advocate and solicitor as defined under s. 2 of the Act and as contemplated by s. 94(3) of the same. Consequently, the appellant could not be said to be guilty of

misconduct under s. 94(3)(j), (k) and/or (o) of the Act for failing to disclose the fact of his suspension from the police force when applying for admission to the Bar as s. 94(3) only applies to misconduct committed by an advocate and solicitor and not by a person who is yet to be admitted to the Bar. (para 46)

(3) If an advocate and solicitor had, *inter alia*, failed to disclose or suppressed any material fact at the time of admission, the respondent can then have recourse to s. 17(3) of the Act and apply to court to have the said advocate and solicitor's name removed from the Roll. Based on the factual matrix of the case and the nature of the complaint against the appellant, s. 17(3) of the Act was the most appropriate provision under which the respondent could have acted. Further, s. 94(5) was equally inapplicable as it was clear that the said provision can only be applied to a pupil who is yet to be admitted to the Bar. However, the court agreed with the respondent's finding that the appellant had acted in breach of s. 30(1)(c) of the Act when he applied for a practicing certificate in 2005 as he was then still a member of the police force. (paras 50, 52, 55 & 56)

(4) Although the appellant was under suspension and was only receiving half of his salary and allowance pursuant to s. 78(3) of the Police Act 1967, he was in fact gainfully employed when he practiced as an advocate and solicitor. Since the appellant had breached s. 30(1)(c) of the Act and r. 44(b) of the 1978 Rules, the DB correctly found the appellant guilty of misconduct under s. 94(3)(j), (k) and/or (o) of the Act. In light of this, the appellant was fully aware that he was not supposed to practice as an advocate and solicitor whilst under suspension and had deliberately misled the respondent into believing that he was not gainfully employed (*Syed Mubarak Syed Ahmad v. Majlis Peguam Malaysia*; foll). (paras 58, 63 & 68)

(5) As regards to the sentence imposed on the appellant, the DB was wrong in holding that the appellant was guilty of misconduct under s. 94(3)(j), (k) and/or (o) of the Act for not disclosing the fact of his suspension from the police force at the time of his admission. Hence, the DB's order that the appellant be struck off the Roll was set aside and substituted

with a suspension from practice for one year. However, the DB's finding was upheld in relation to the appellant's misconduct under s. 94(3)(j), (k) and/or (o) of the Act for being in breach of s. 30(1)(c) of the Act and r. 44(b) of the 1978 Rules. (paras 65 & 68)

Case(s) referred to:

Akberdin Hj Abdul Kader & Anor v. Majlis Peguam Malaysia [2001] 4 CLJ 347 HC ***(refd)***

Re SRC Augustin [1972] 1 LNS 128 FC ***(refd)***

Syed Mubarak Syed Ahmad v. Majlis Peguam Malaysia [2000] 3 CLJ 659 CA ***(foll)***

Legislation referred to:

Legal Profession Act 1976, ss. 2, 17(3), 30(1)(c), 94(1), (2), (3)(j)(k)(o), (5), 99(3), 103C(1)(c)(iii)

Legal Profession (Practice & Etiquette) Rules 1978, r. 44(b)

Police Act 1967, s. 78(1), (2), (3)

For the appellant - Wong Kian Kheong (Alex Tan Chie Sian with him); M/s Wong Kian Kheong

For the respondent - Sheila Ramalingam; M/s Shearn Delamore & Co

Reported by Najib Tamby

JUDGMENT

Alizatul Khair Osman J:

[1] This is an appeal by way of originating motion by the appellant against the order of the Disciplinary Board (DB) dated 13 February 2009 ordering the appellant to be struck off the Roll of the advocates and solicitors of the High Court of Malaya (the said order). The appellant is seeking to set aside the said order.

Material Facts

[2] The material facts in this case are largely undisputed and they are as follows.

[3] The appellant was at all material times an officer of the Royal Malaysian Police.

[4] The appellant was interdicted from duty on 13 July 2004 pursuant to s. 78(1) of the Police Act 1967 pending investigations by the Anti-Corruption Agency (ACA) on suspicion of accepting a bribe.

[5] On 6 August 2004, the appellant filed his petition for admission to the Bar. The petition was served on the respondent on 23 September 2004.

[6] On 30 January 2004, the appellant applied to the respondent for exemption from pupilage for any period.

[7] On 26 November 2004, the respondent granted the appellant exemption from pupilage for a period of six months.

[8] On 22 April 2005, the appellant was admitted as an advocate and solicitor of the High Court of Malaya without any objections from the respondent.

[9] After the appellant's admission to the Bar, he practiced as a legal assistant with M/s Shariff & Som.

[10] On 17 December 2005, the appellant resigned as legal assistant with M/s Shariff & Som.

[11] On 30 November 2005, the appellant applied to set up a sole proprietorship firm under the name and style of M/s KL Chee & Co.

[12] The respondent allowed the appellant's application and from 1 January 2006, the appellant commenced practice as a sole proprietorship under the name M/s KL Chee & Co.

[13] On 28 March 2006, the Johore Bar Committee forwarded a letter dated 17 March 2006, from the Royal Malaysian Police, Johore Bahru to the respondent which in essence raised the following enquiry (Query):

> How could the appellant have undergone pupilage, be admitted to the Bar and gone on to practice under his own firm when the appellant had been interdicted from duty as a police officer since 13 July 2004 pursuant to s. 78(1) of the Police Act 1967 pending investigation on suspicion of accepting a bribe, which investigation was still pending.

This Query forms the genesis (as the respondent puts it) of the respondent's complaint against the appellant.

[14] On 6 September 2004, the respondent wrote to the appellant seeking an explanation of this matter and whether the same was disclosed to the Bar Council prior to the appellant's admission to the Bar. (see p. 40 of exh. A36).

[15] On 22 September 2006, the appellant replied to the following effect: A

(i) the ACA in Johor had completed their investigations and no further action had been taken since;

(ii) that he had prior to his admission disclosed all relevant information in his petition papers (see p. 41, of exh. A36). B

Vide letter dated 9 October 2006, the appellant informed the respondent that he would cease practice with immediate effect.

C

[16] On 30 October 2006 the respondent issued a show cause letter to the appellant for what the respondent alleged as the appellant's failure to disclose the fact that he was under suspension and was still employed as a police officer when he filed his petition papers and practiced as an advocate and solicitor. (see p. 46 of exh. A36). D

[17] On 15 November 2006, the appellant replied as follows:

(i) the appellant contended that he was not employed at the material time; E

(ii) the respondent was aware that he was a police officer at the material time as he had applied for and been granted an exemption from pupilage on the basis of his experience in the police force; and F

(iii) he denied any misconduct on his part.

[18] On 23 January 2007, the respondent lodged a complaint (the complaint) against the appellant to the DB pursuant to s. 99(3) of the Legal Profession Act 1976 (LPA) having found, upon reviewing the appellant's papers, no evidence of any disclosure being made by the appellant of the fact that he was a police officer and was interdicted pending investigation, whether prior to his admission to the Bar or during his practice as an advocate and solicitor. G H

[19] On 24 July 2007, the appellant submitted his written explanation to the DB (see pp. 57-60, exh. A36).

[20] Subsequently the DB appointed the Disciplinary Committee (DC) to conduct investigation into the complaint and after conducting hearings to investigate the complaint, the DC recommended that there was merit in the complaint and that the appellant be struck off the Roll. (see pp. 153-164, exh. A36). I

[21] On 13 February 2009, the DB, upon considering the DC's report, ordered that the appellant be struck off the Roll. (see p. 166, exh. A36).

The Complaint

[22] Based on the respondent's letter to the Bar Council dated 23 January 2007, the respondent's complaint against the appellant is, in the words of the appellant, two-pronged:

(a) prior to the appellant's admission to the Bar, the appellant had deliberately withheld the following information from the respondent knowing that the information would affect the respondent's decision on whether to object to the respondent's admission to the Bar:

(i) the appellant was still an active member of the police force; and

(ii) the appellant was under suspension pending investigation by the ACA.

(b) The appellant knowingly breached s. 30(1)(c) of the LPA and r. 44(b) of the Legal Profession (Practice & Etiquette) Rules 1978 (the said rules) by practicing as an advocate and solicitor when at all material times the appellant was "gainfully employed" as a police officer with the Royal Malaysian Police.

[23] It was contended by the respondent that by reason of the above complaint, the appellant was guilty of "misconduct" as defined under s. 94(3)(j), (k) and (o) of the LPA.

The Appellant's Contention

[24] The appellant contended as follows:

(i) the DC had committed an error of law by relying on s. 17(3) of the LPA;

(ii) the appellant has no duty to disclose that he was under suspension pending investigation by the ACA;

(iii) there was no merit in the complaint in para. (a) above as the respondent had failed to prove beyond reasonable doubt that the appellant had committed a "misconduct" under s. 94(3)(j), (k) and/or (o) of the LPA;

(iv) the appellant is not an "employee" and hence, s. 30(1)(c) of the LPA and sub-r. 44(b) do not apply; and

(v) the appellant was not "gainfully employed" and nor was the appellant a "full-time salaried employee".

The Respondent's Contention

[25] In their submission the respondent emphasised that the respondent's complaint against the appellant *vis-a-vis* his admission to the Bar was not that he was gainfully employed as a police officer during his pupilage but that he failed to disclose the fact of his suspension to the respondent when applying for admission to the Bar.

[26] In this regard it is the contention of the respondent that whilst there is no specific legal provision requiring the appellant to disclose the fact of his suspension to the respondent, the appellant nevertheless has a duty to make such disclosure.

[27] This is evident from the petition itself which specifically provides as follows:

> I confirm that all the above particulars are correct I understand that the Bar Council needs the fullest possible particulars of myself in order to ascertain my suitability for admission as an Advocate and Solicitor of the High Court, Malaya.

[28] The respondent also relied on the following cases in support of their contention that there is a duty on the petitioner when applying for admission to the Bar to ensure that he is qualified and that this duty includes the duty to disclose all relevant facts to the respondent:

(i) *Akberdin Hj Abdul Kader & Anor v. Majlis Peguam Malaysia* [2001] 4 CLJ 347 *(Akberdin)*

(ii) *Re SRC Augustin* [1972] 1 LNS 128

[29] According to the respondent, failure on the appellant's part to disclose the fact of his suspension resulted in the respondent being deprived of the right to decide whether or not to object to the appellant's admission.

[30] As to the complaint under para. (b) above, that the appellant knowingly breached s. 30(1)(c) of the LPA and r. 44(b) of the said rules, the respondent relied on the case of *Syed Mubarak Syed Ahmad v. Majlis Peguam Malaysia* [2000] 3 CLJ 659 *(Syed Mubarak)* to contend that the appellant was gainfully employed at the time that he applied for a practicing certificate.

[31] The respondent argued that based on the undisputed fact that even whilst under suspension, the appellant:

(i) was still considered to be a police officer;

(ii) received half month salary and allowance from the police force; and

(iii) was allowed to carry his police identification.

[32] The appellant was in fact gainfully employed when he practiced as an advocate and solicitor. The appellant therefore ought not to have applied for a practicing certificate. By doing so and subsequently practicing as an advocate and solicitor, the appellant, in the respondent's view had clearly violated s. 30(1) of the LPA and r. 44(b) of the said rules.

[33] The respondent further submitted that the appellant was fully aware that he was not supposed to practice as an advocate and solicitor whilst under suspension, and deliberately misled the respondent into believing that the appellant was not gainfully employed. This is clear from the following documents:

(i) Page 22 of exh. A36

Under 'Job History', the appellant stated "21 years plus service in the police force".

(ii) Page 24 of exh. A36

Under 'Years of Experience', the appellant stated "22 years". Under 'If experience is both pre and post qualification please state (A) period of prequalification experience' the appellant stated "1982-1998".

(iii) Page 25 of exh. A36

In the last sentence in para. 3, the appellant stated *"I also conducted prosecution in the Sessions Court in Johor Bahru besides supervising my fellow prosecuting officers in the Magistrates Courts until I commenced my pupilage on 6 August 2004 ..."* (emphasis added).

(iv) Pages 127, 134 and 147 of exh. A36

The appellant made no mention about him still being a police officer.

[34] All the above documents according to the respondent were carefully orchestrated by the appellant so as to willfully deceive the respondent into believing that the appellant was no longer a police officer. This can only be because the appellant was well aware that he ought not to be practicing as an advocate and solicitor, as he was still a police officer.

Decision

[35] After having carefully considered both the appellant's and respondent's submission and having perused the various affidavits including the exhibits, in particular exh. A36, I made the following order:

(i) that the order of the DB ordering that the appellant be struck off the Roll be substituted with the following order:

that the appellant be suspended for 1 year, on the following ground:

(a) the finding of the DB that the appellant was guilty of misconduct under section 94(3)(j), (k) and/or (o) of the LPA for not disclosing, at the time he filed the petition that he was interdicted or suspended, from the police force, be set aside as the appellant was not an advocate and solicitor at that point in time;

(b) the DB's finding that the appellant was guilty of misconduct under the said section 94(3)(j), (k) and/or (o) of the LPA, for being in breach of section 30(1) of the LPA and Rule 44(b) of the said Rules is upheld; and

(ii) no order as to costs.

[36] I had granted a stay of my order upon appellant counsel's oral application and there being no objections from the respondent's counsel. I was also satisfied there were special circumstances in this case that warranted a stay being granted.

Reasons

[37] I had set aside the DB's finding of guilt for misconduct under s. 94(3)(j), (k) and/or (o) of the LPA in respect of the appellant's failure to disclose the fact that the was interdicted (or suspended to use the respondent's term) from the police force at

A the time he applied for admission to the Bar because, as I had stated above, the appellant was not an advocate and solicitor at the material time.

Section 94(1) of the LPA states as follows:

B

> All **advocates and solicitors** shall be subject for the purposes of all disciplinary actions to the central of the Disciplinary Board. (emphasis added)

[38] Under s. 94(2), "any advocate and solicitor" found guilty of C any misconduct shall be liable to be struck off the Roll or suspended from practice for any period not exceeding five years.

[39] As to what amounts to 'misconduct', s. 94(3) provides as follows:

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> For the purposes of this Part "misconduct" means conduct or omission to act in Malaysia or elsewhere by an **advocate and solicitor** in a professional capacity or otherwise which amounts to grave impropriety and includes:
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> (a) ...
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> (b) ...
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> (h) ...
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> (i) ...
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> (j) the carrying on by himself, directly or indirectly, of any profession, trade, business or calling which is incompatible with the legal profession or being employed for reward or otherwise in any such profession, trade, business or calling;
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> H
>
> (k) the breach of any provision of this Act or of any rules made thereafter or any direction or ruling of the Bar Council;
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> I
>
> (l) ...
>
> (m) ...

(n) ...

(o) being guilty of any conduct which is unbefitting of an **advocate and solicitor** or which brings or is calculated to bring the legal profession into dispute.
(emphasis added)

[40] It is clear from the above provisions that s. 94 deals with the power of the DB to exercise disciplinary control over an advocate and solicitor in relation to his conduct (or omission) in his capacity as such (ie, in a professional capacity) or otherwise.

[41] An "advocate and solicitor" is defined in s. 2 of the LPA as follows:

"advocate and solicitor", and "solicitor" where the context requires means **an advocate and solicitor of the High Court admitted and enrolled** under this Act or under any written law prior to the coming into operation of this Act.
(emphasis added)

[42] Thus based on the above definition of 'advocate and solicitor' the misconduct under s. 94(3) in respect of which a person can be punished under s. 94(2) of the LPA refers to conduct or omission by an advocate and solicitor of the High Court who has been admitted and enrolled under the LPA (or any previous written law).

[43] In the present case the misconduct which the appellant was found guilty of under s. 94(3) (j), (k) and/or (o) of the LPA was based on the respondent's complaint to the DB to the following effect:

The Bar Council's complaint is that *the respondent failed to disclose the fact of his suspension to the Bar Council when applying for admission to the Bar.*

(see "Report of the Disciplinary Committee. The Disciplinary Committee's Findings of Fact.", page 163, Exhibit A-36) (emphasis added).

[44] After conducting a hearing into the complaint, the DC made the following finding:

It is a finding of the Disciplinary Committee that the respondent deliberately withheld the fact of his suspension to the Bar Council knowing that is (sic) would affect the Bar Council's decision whether to object to the respondent's admission to the Bar.

A (see page 164, paragraph 13, exhibit A-36, "Report of the Disciplinary Committee. The Disciplinary Committee's findings of fact".

[45] The abovesaid finding of the DC was duly affirmed by the DB with the latter accepting the recommendation of the DC that B the appellant "be removed from the Roll as advocate and solicitor pursuant to s. 103C(c)(1)(c)(iii) of the Legal Profession Act 1976."

(see pp. 164 and 166, exh. A-36)

C **[46]** It is patently clear from the above that the complaint of the Bar Council (the respondent) to the DB and subsequently the finding of the DB relate to the appellant's conduct prior to his admission to the Bar. It does not relate to his conduct as an advocate and solicitor as defined under s. 2 of the LPA and as D contemplated by s. 94(3) of the LPA. Consequently the appellant could not be said to be guilty of misconduct under s. 94(3)(j),(k) and/or (o) of the LPA for failing to disclose the fact of his suspension from the police force when applying for admission to the Bar as s. 94(3) only applies to misconduct committed by an E advocate and solicitor and not by a person who is yet to be admitted to the Bar.

[47] To my mind given the nature of the complaint, the more appropriate provision under which the respondent could have F acted was s. 17(3) of the LPA. Section 17(3) of the LPA states as follows:

> **If at any time after the admission and enrolment of any petitioner as an advocate and solicitor**, it is shown to the satisfaction of the court that any petition, affidavit, certificate or G other document filed by a petitioner containing any statement which is false or misleading in substance or a suppression if any material fact the name of the petitioner may be removed from the Roll.
> (emphasis added)

H **[48]** In the present case, it is not disputed that the discovery of the act complained of ie, the concealment of the appellant's suspension from the police force, took place after the appellant was admitted and enrolled as an advocate and solicitor.

I **[49]** It is also not in dispute that the appellant did not disclose this material fact of his suspension from the police force in his petition for admission. The appellant however disagreed that he

was under a duty to disclose such fact in his petition, a view not shared by the respondent but that is another issue altogether and which I do not intend to deal with as it is not relevant for the purpose of determining whether or not the respondent should have acted under s. 17(3) instead of instituting disciplinary action in respect of the complaint, of non-disclosure of the appellant's suspension from the police force.

[50] In my view it is abundantly clear that based on the factual matrix of the case and the nature of the complaint against the appellant, s. 17(3) of the LPA is the most appropriate provision under which the respondent could and should have acted. This was recognized by Abdul Aziz J (as he then was) in *Akberdin (supra)* when he pronounced to the following affect:

> In my judgment, the estoppel argument is hindered by s. 17(3) of the Act, which provides as follows:
>
> > If at any time after the admission and enrolment of any petitioner as an advocate and solicitor, it is shown to the satisfaction of the court that any petition, affidavit, certificate or other document filed by a petitioner contains any statement which is false or a suppression of any material fact the name of the petitioner may be removed from the Roll.
>
> It recognises by implication that everything may have appeared to be alright to everybody at the time of admission, but yet something may be found to be not right after admission to that the advocate and solicitor covered is at risk of being removed from the Roll.

The respondent sought to rely on *Akberdin*'s case to support their proposition that the appellant has a duty to ensure that he was qualified before applying for admission to the Bar and that this duty includes the duty to disclose all relevant facts to the respondent.

[51] However as rightly pointed out by learned counsel for the appellant, the respondent cannot seek to rely on *Akberdin* to justify taking disciplinary proceedings against the appellant under s. 94(3)(j), (k) and/or (o) of the LPA for breach of duty to disclose a material fact at the time of admission, when in *Akberdin* His Lordship Aziz Mohd J specifically referred to s. 17(3) of the LPA in relation to such non-disclosure.

[52] In other words what His Lordship meant was that if, after an advocate and solicitor has been admitted, it was found that the advocate and solicitor concerned had, *inter-alia*, failed to disclose or suppress any material fact at the time of admission as what had happened here, then the respondent can have recourse to s. 17(3) and apply to the court to have the advocate and solicitor's name removed from the Roll.

[53] As stated earlier the respondent in the present case did not follow this route. Instead it preferred a complaint to the DB in respect of the appellant's non-disclosure (of his suspension from the police force) in his petition and proceeded to take disciplinary action against the appellant culminating in the latter being found guilty of misconduct under s. 94(3)(j), (k) and/or (o) and being struck off the Roll under s. 94(2) of the LPA.

[54] For the reasons I have adverted to earlier, the respondent in my view was wrong in finding the appellant guilty of misconduct under s. 94(3)(j), (k) and/or (o) of the LPA in respect of the complaint that the appellant failed to disclose his suspension from the police force at the time of his admission to the Bar.

[55] I am also of the view that s. 94(5) of the LPA is equally inapplicable as it is very clear from the order that can be imposed under the section that s. 94(5) can only apply to a pupil who is yet to be admitted to the Bar.

[56] I however agree with the respondent's finding that the appellant had acted in breach of s. 30(1)(c) of the LPA when he applied for a practicing certificate in 2005 as he was still a member of the police force. The appellant only resigned from the Royal Malaysian Police on 26 February 2007.

Section 30(1)(c) of the LPA provide as follows:

> (1) No advocate and solicitor shall apply for a practicing certificate-(c) if he is gainfully employed by any other person, firm or body in a capacity other then as an advocate and solicitor:

[57] Rule 44(b) of the said rules states as follows:

> An advocate and solicitor shall not be a full-time salaried employee of any person, firm (other than advocate and solicitor or firm of advocates and solicitors) or corporation so long as he continues

> to practice and shall on taking up any such employment, intimate the fact to the Bar Council and take steps to cease to practice as an advocate and solicitor so long as he continues in such employment.

[58] Although the appellant did not dispute that he was a police officer when he applied for a practising certificate, he nevertheless contended that he was not a "full-time salaried employee" of the police force when he practiced as an advocate and solicitor. This was because when he was under interdiction or suspension he was only receiving half of his salary and allowance pursuant to s. 78(3) of the Police Act 1967.

[59] I am unable to agree with the appellant's contention. As submitted by learned counsel for the respondent, the words "gainfully employed" were considered in the case of *Syed Mubarak*, where the Court of Appeal affirmed the decision of the High Court at p. 171 as follows:

> Adopting the Concise Oxford Dictionary's definition of the word employ, two qualifications are required to be satisfied before one can be considered as employed. The first: is the use of the service of the person. The second: relates to payment of his service ...

[60] And at pp. 175-176:

> To return to the present instance, there can be little argument that the primary purpose of the Act is to regulate the legal profession. *The object of parliament is to maintain high standards in the profession. That is because the general public must have confidence in the integrity and the independence of the legal profession. It is obvious that parliament intended that persons who choose to be advocates and solicitors must exclusively practice as such.* If parliament intended that an advocate and solicitor should be permitted to practice more than one profession, one should be able to find clear language in which such permission is to be found.
> (emphasis added)

[61] As stated by the respondent counsel appellant did not dispute that even whilst under suspension:

(a) He was still considered to be a police officer;

(b) He received half month salary and allowance from the police force; and

(c) He was allowed to carry his police identification.

[62] In this regard s. 78(2) of the Police Act 1967 is instructive:

> (2) The powers, privileges and benefits rested in a police officer interdicted under subsection (1) shall during his interdiction be in abeyance:
>
> Provided that such police officer shall continue to be subject to the same authority and discipline as if he had not been interdicted and **he shall not by reason only if such interdiction cause to be a police officer**.
> (emphasis added)

[63] I therefore agree with the respondent's submission that applying the principle and reasoning in *Syed Mubarak*, which decision is binding on this court, and based on the undisputed facts as shown in para. (a), (b) and (c) above, the appellant was in fact gainfully employed when he practiced as an advocate and solicitor. I also agree that he ought not to have applied for a practicing certificate in the first place and that by doing so and subsequently practicing as an advocate and solicitor, the appellant had clearly breached s. 30(1)(c) of the LPA and r. 44(b) of the said rules.

[64] As the appellant had breached s. 30(1)(c) of the LPA and r. 44(b) of the said rules, the DB had correctly found the appellant to be guilty of misconduct under s. 94(3)(j), (k) and/or (o) of the LPA. The finding of the DB on this issue was accordingly upheld.

Sentence

[65] As regards the sentence imposed on the appellant, as I had found that the DB was wrong in holding that the appellant was guilty of misconduct under s. 94(3)(j), (k) and/or (o) of the LPA for not disclosing the fact of his suspension from the police force at the time of his admission, I ordered the DB's order that the appellant be struck off the Roll be set aside and be substituted with a suspension from practice for one year.

[66] This was because I find that the main complaint by the respondent to the DB was the appellant's failure to disclose the fact of his suspension from the police force at the time he applied for admission to the Bar. It was primarily for that reason that the DC recommended and which recommendation was accepted by the DB that the appellant was ordered to be struck off the Roll.

[67] This is evident from the DC's finding of facts in its report at p. 164 exh. A36 where it relied on *Akberdin's* case to support its finding and recommendation on this issue.

[68] As regards the DB's finding that the appellant was guilty of misconduct under the said s. 94(3)(j), (k) and/or (o) for being in breach of s. 30(1)(c) of the LPA and r. 44(b) of the said rules which finding I upheld, I did not think that a fine is appropriate as the misconduct which the appellant was found guilty of is fairly serious in nature. I also agree to a certain extent with the respondent that the appellant was fully aware that he was not supposed to practice as an advocate and solicitor whilst under suspension and had deliberately misled the respondent into believing that the appellant was not gainfully employed as apparent from the documents at pp. 22, 24, 25, 127, 134 and 147 of exh. A-36 (see p. 10 of the judgment).

[69] In the circumstances I was of the view that a sentence of suspension from practice for one year is just and appropriate.